



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 6614-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 18 December 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty on 15 June 1989. On 30 August 1990, you received non-judicial punishment (NJP) for failure to obey a lawful order. A portion

of your punishment was suspended. In addition, you were issued a counseling warning that you may be processed for administrative separation should you continue your misconduct. It was also recommended that you attend Navy Alcohol and Drug Safety Action Program (NADSAP) course Level I. On 9 November 1990, the Commanding Officer (CO) vacated your suspended punishment due to your continued misconduct. On 28 May 1991, you were charged by civil authorities for breach of peace. You received your second NJP on 5 June 1991, for operating a vehicle while drunk, unlawfully striking your wife in the chest and face with your hands and feet, consuming alcoholic beverage under the legal drinking age, and drunk and disorderly conduct.

Consequently, you were notified of administrative separation processing for commission of a serious offense. After you waived your rights, the CO made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and you were so discharged on 19 July 1991.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that you were never physical with your wife, never put your hands on her, and times have changed since your discharge. You also provided a personal statement explaining your version of the circumstances of your charged misconduct involving your wife. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 1 November 2024. The Ph.D. stated in pertinent part:

Petitioner submitted evidence of post-service diagnoses of Alcohol Use Disorder and Depression. There is evidence of an “anxiety reaction” while in service that resulted in disqualification from submarine service, however the nature and severity of his misconduct cannot be explained by anxiety or any other mental health condition. It is more likely that the Petitioner’s misconduct was due to alcohol use disorder and/or was characterological in nature.

The Ph.D. concluded, “it is my clinical opinion that there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO and determined there insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you provided evidence of an “anxiety reaction” while in service that resulted

in disqualification from submarine service; however, the nature and severity of your misconduct cannot be explained by anxiety or any other mental health condition. Furthermore, contrary to your contention that you did not assault your wife, the Board noted the preliminary inquiry into your misconduct documented that the doctor from the emergency room reported that your wife had been hit several times in the head and kicked in the head. Additionally, she reported to the command master chief that you had a history of assaulting her when you are drinking. Therefore, the Board found your contentions to be unpersuasive and determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/9/2025

